

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

July 19, 2005

Section 5 Submission

Chief, Voting Section
Civil Rights Division
Room 7254 – NWB
Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20006

Re: Submission Under Section 5 of the Voting Rights Act for:

Dear Voting Section Chief:

New Hampshire Revised Statute Annotated ("RSA") 653:9, a STATUTE related to the Presidential primary election, most recently amended by Laws of 1999 Chapter 161 and previously amended by the chapters cited below.

Pursuant to 42 U.S.C. § 1973 (c), the State of New Hampshire, through the Office of the New Hampshire Attorney General, hereby submits RSA 653:9, a STATUTE related to the Presidential primary elections, most recently amended by Laws of 1999 Chapter 161 and previously amended by the chapters cited below.

SUBMISSION:

In accordance with 28 C.F.R. § 51.27, the submission is as follows:

- a) Chapter 161 (1999) amending RSA 653:9 is attached. (Exhibit 653:9 A).
- 1. Chapter 289 (1995) amending RSA 653:9 is attached (Exhibit 653:9 B).
- b) Chapter 436 (1979) recodifying RSA's 58:01 and 58:02 as RSA 653:9 is attached (Exhibit 653:9 C).

- c) The changes made by amendments to RSA 653:9 are as follows:
 - 1. Chapter 161 (1999) makes the following changes:
 - a. Replaces the word “*the*” before the second time “*Tuesday*” is used in the first sentence with the word “*a*”
 - b. Inserts the following after the word “*Tuesday*” in the first sentence: “...*selected by the secretary of state which is*”
 - c. Inert the words “... *or more* ...” following “... *7 days* ...” in the first sentence.
 - d. Insert the phrase “...*or the year previous*...” at the end of the first sentence.
 - 2. Chapter 289 (1995) inserts the words “...*at least 7 days* ...” in the first sentence following the phrase “...*or on the Tuesday*...”
 - 3. Chapter 436 (1979) recodifies RSA’s 58:01 and 58:02 as RSA 653:9.
- d) This submission is made by: Senior Assistant Attorney General Orville B. Fitch II, 33 Capitol Street, Concord, New Hampshire 03301, Phone: (603) 271-1238.
- e) The submitting authority is New Hampshire Attorney General, Kelly A. Ayotte for the State of New Hampshire.
- f) Not applicable.
- g) The changes for which pre-clearance is sought were made by a decision of the New Hampshire General Court (Legislature).
- h) In accordance with Amendment X of the U.S. Constitution, the New Hampshire General Court, the State’s legislature, acting pursuant to the New Hampshire Constitution Part Second, Article 2, granting supreme legislative power within the state to the House and Senate, who with right to negate each other are granted power to make law through Part Second, Article 5. Additional authority regarding election law is vested in Part First, Article 11.

The legislature through a bicameral process passed law to create Chapter 161 (Exhibit 653:9 A). The bill was signed into law (by the Governor) on June 29, 1999, pursuant to New Hampshire Constitution Part Second, Article 44.

i) Adoption dates:

1. Chapter 161 (1999) adopted June 29, 1999
2. Chapter 289 (1995) adopted June 21, 1995
3. Chapter 436 (1979) adopted June 25, 1979

j) Effective dates:

1. Chapter 161 (1999) effective June 29, 1999
2. Chapter 289 (1995) effective June 21, 1995
3. Chapter 436 (1979) effective July 1, 1979

k) The changes have been enforced.

l) The changes affect the entire State of New Hampshire.

m) The purpose for the changes are as follows:

1. The purpose of the Chapter 161 (1999) is to allow the secretary of state more flexibility in setting the date of NH presidential primary.
2. The purpose of the Chapter 289 (1995) is to prescribe a minimum time prior to another state's primary before which NH presidential primary must be held, namely at minimum 7 days prior to another state's presidential primary.
3. The purpose of the Chapter 436 (1979) was to recodify RSA's 58:01 and 58:02 as RSA 653:9.

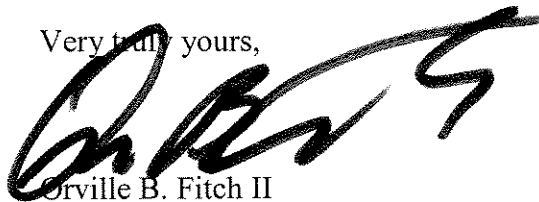
n) These changes do not negatively target any protected class under section 5 of the Voting Rights Act of 1965. *42 U.S.C. 1973c*. They are expected to have neutral impact and do not meet the test of retrogression defined in *Reno v. Bossier Parish Sch. Bd*, 520 U.S. 471, 478 (1997). "(T)he ability of minority groups...to elect their choices to office" will not be diminished. *Beer v. U.S.*, 425 U.S. 130,141 (1976).

o) None known.

- p) RSA 653:9 was precleared through 1979 on June 22, 2004 by D.O.J. file numbers 2004-2563, 2004-2581 and 2004-2582. A copy of this preclearance is attached as Exhibit 653:9 D. This submission seeks preclearance of all subsequent changes.
- q) Not applicable as this is not a redistricting plan.
- r) Exhibit 653:9 E is a copy of a Press Release of this submission, its availability, and inviting comment to federal Department of Justice.

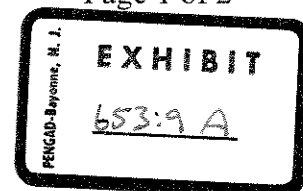
I expect the foregoing information is sufficient to enable the United States Attorney General to make the required determination pursuant to Section 5 of the Voting Rights Act. If further information is required or would be helpful, please contact me.

Very truly yours,



Orville B. Fitch II
Senior Assistant Attorney General
Civil Bureau
(603) 271-1238
bud.fitch@doj.nh.gov

85367.doc



CHAPTER 161

HB 399 - FINAL VERSION

9june99.....1304h

6/24/99 1786s

1999 SESSION

99-0347

03/02

HOUSE BILL 399

AN ACT allowing the secretary of state to have flexibility in moving the date of New Hampshire's presidential primary and changing the filing period for declarations of candidacy for candidates for president and vice-president at the presidential primary.

SPONSORS: Rep. Splaine, Rock 34; Rep. Flanagan, Rock 14

COMMITTEE: Election Law

AMENDED ANALYSIS

This bill permits the secretary of state to select a date for the presidential primary which is on a Tuesday 7 days or more prior to a similar election in any other state and provides that the presidential primary may be held in the year prior to a presidential election year. This bill also changes the filing period for declarations of candidacy for candidates for president and vice-president at the presidential primary election from December to November.

Explanation: Matter added to current law appears in *bold italics*.

Matter removed from current law appears [~~in brackets and struckthrough~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

9june99.....1304h

6/24/99 1786s

99-0347

03/02

STATE OF NEW HAMPSHIRE

In the Year of Our Lord One Thousand Nine Hundred and Ninety-Nine

AN ACT allowing the secretary of state to have flexibility in moving the date of New Hampshire's presidential primary and changing the filing period for declarations of candidacy for candidates for president and vice-president at the presidential primary.

Be it Enacted by the Senate and House of Representatives in General Court convened:

161:1 Findings and Purpose. The general court finds that it is imperative to support the tradition of the New Hampshire first-in-the-nation presidential primary and to encourage candidates to honor the law which requires that New Hampshire's primary precede any similar election by 7 days. New Hampshire has held its presidential primary 7 or more days before the primary of any other state since at least 1920, and has statutorily required such precedence since 1976. However, recent efforts by other states to usurp New Hampshire's first-in-the-nation primary status necessitate legislative action to preserve the history, integrity, and tradition of the New Hampshire primary. In lieu of substantial changes to the law of this state, however, the general court prefers to rely on the cooperation of candidates willing to declare their support for the first-in-the-nation primary tradition by pledging not to file or campaign in any state that holds its primary within 7 days of New Hampshire. It is therefore the intent of the general court to encourage candidates to honor the New Hampshire primary tradition, while establishing greater flexibility for the secretary of state in determining the presidential primary date.

161:2 Elections; Election of Officers and Delegates; Election Dates; Presidential Primary Election; Selection by Secretary of State. Amend RSA 653:9 to read as follows:

653:9 Presidential Primary Election. The presidential primary election shall be held on the second Tuesday in March or on ~~[the]~~ *a Tuesday selected by the secretary of state which is [at least] 7 days or more* immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected *or the year previous*. Said primary shall be held in connection with the regular March town meeting or election or, if held on any other day, at a special election called by the secretary of state for that purpose.

161:3 Elections; Nominations; Presidential Nominations; Declaration of Candidacy; Filing Period. Amend RSA 655:47, II to read as follows:

II. Declarations of candidacy shall be filed between the first Monday in ~~[December and the Friday of the following week]~~ *November and the third Friday in November*.

161:4 Effective Date. This act shall take effect upon its passage.

(Approved: June 29, 1999)

(Effective Date: June 29, 1999)



16march95..1629h

5/23/95....2730s

6june95....CofC Rpt....2772h

06/08/95...2890L-EBA

HOUSE BILL - FINAL VERSION

1995 SESSION 0737L

95-0699

10/05

HOUSE BILL **333**

AN ACT relative to election procedures.

SPONSORS: Rep. Flanagan, Rock 14

COMMITTEE: Constitutional and Statutory Revision

AMENDED ANALYSIS

This bill amends the election laws relative to the date for holding the presidential primary election.

The bill also sets forth future legislation for the general court to enact to implement the provisions of the National Voter Registration Act if the court in League of Women Voters, AFL-CIO and Citizen Action v. Stephen E. Merrill, et al, finds that the provisions of the act must be applied to voter registration in New Hampshire.

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EXPLANATION: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears in [brackets].

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

16march95..1629h

5/23/95....2730s

6june95....CofC Rpt....2772h

06/08/95...2890L-EBA

CHAPTER 289

HOUSE BILL - FINAL VERSION

0737L

95-0699

10/05

HB 333

STATE OF NEW HAMPSHIRE

In the year of Our Lord

One Thousand Nine Hundred and Ninety-Five

AN ACT

relative to election procedures.

Be it Enacted by the Senate and House of

Representatives in General Court convened:

289:1 Date for Holding Presidential Primary Election. Amend
RSA 653:9 to read as follows:

653:9 Presidential Primary Election. The presidential primary election shall be held on the second Tuesday in March or on the Tuesday **at least 7 days** immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected. Said primary shall be held in connection with the regular March town meeting or election or, if held on any other day, at a special election called by the secretary of state for that purpose.

289:2 Statement of Purpose. The general court hereby acknowledges the pendency of League of Women Voters, AFL-

CIO and Citizen Action v. Stephen E. Merrill, et al, Docket No. C-95-232-JD, relative to the National Voter Registration Act, 42 USC 1973gg et seq. In light of the state's significant interest in the electoral process, the purpose of this act is to set forth future legislation which shall become effective in the event of an adverse ruling in that case.

289:3 Statement of Intent. The general court recognizes that by its terms, the National Voter Registration Act applies only to federal elections. The general court further states its intention, should it be determined as a result of a final order entered in League of Women Voters, that the National Voter Registration Act applies to New Hampshire, to enact all necessary laws to effectuate the following with respect to certain provisions of the National Voter Registration Act:

I. The provisions of the National Voter Registration Act with respect to motor vehicle driver's license registration and mail registration, and in-person registration at a federal, state or non-governmental office designated under 42 USC 1973gg-5, 42 USC 1973gg-2, et seq. shall apply only to federal elections, as defined in Title 2 U.S.C. 431(3).

II. A person who registers to vote under the provisions of the National Voter Registration Act shall vote in person the first time, if the person registers to vote by mail and if the person has not previously voted in that jurisdiction.

III. The following shall be the designated voter registration agencies for the state:

- (a) Motor vehicle divisions.
- (b) Armed services recruiting offices.
- (c) All public assistance agencies.
- (d) All agencies assisting persons with disabilities.
- (e) Public libraries.

IV. All completed voter registration forms from designated agencies shall be accepted and forwarded to the secretary of state's office.

V. Registration forms to vote in any federal election for federal offices shall be submitted, accepted, postmarked, or otherwise accomplished as provided by law 30 days prior to the election.

VI. The deadline to register to vote in any federal election for federal offices shall be 30 days prior to any election.

VII. Any person registering under the National Voter Registration Act shall be entitled to vote for federal offices only. As provided in Title 2 U.S.C. 431(3), the term "federal office" means the office of President or Vice-President, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress.

VIII. Two checklists shall be maintained: one for persons registering under the National Voter Registration Act who are only allowed to vote for federal offices; and one for persons registering with their town or city clerks or supervisors of the checklist who shall be allowed to vote in all elections.

289:4 Repeal. RSA 654:7-a and 654:7-b, relative to election day registration at state and federal elections, are repealed.

289:5 Application.

I. Sections 3 and 4 of this act shall take effect upon the date that the court in the case of League of Women Voters, AFL-CIO and Citizen Action v. Stephen E. Merrill, et al, issues a final order that the National Voter Registration Act applies to voter registration in New Hampshire.

II. Sections 3 and 4 of this act shall not take effect if the court in League of Women Voters, AFL-CIO and Citizen Action v. Stephen E. Merrill, et al, issues a final order which finds that the state of New Hampshire is not required to comply with the provisions of the National Voter Registration Act.

III. Section 1 of HB 440 of the 1995 legislative session (1995, 187:1), "An Act relative to same day voter registration at city, town, school district, and village district elections", shall be repealed if the court in League of Women Voters, AFL-CIO and Citizen Action v. Stephen E. Merrill, et al, issues a final order which finds that the state of New Hampshire is required to comply with the provisions of the National Voter Registration Act, and section 1 of HB 440 (1995, 187:1) shall be repealed upon the date on which such order is issued.

289:6 Effective Date.

I. Sections 3 and 4 of this act shall take effect as provided in section 5.

II. The remainder of this act shall take effect upon its passage.

Approved: June 21, 1995

Effective: I. Sections 3 and 4 shall take effect as provided in section 5.

II. The remainder shall take effect June 21, 1995.

chosen, one shall serve a 4-year term, and one shall serve a 2-year term and both shall hold their offices until their successors are chosen and qualified. Following the 1980 state general election, the 4-year term shall be rotated in sequence starting with district 3.

Federal Officers to Be Elected

653:2 Electors of the President and Vice-President. At the state general election in 1980 and at the state general election every fourth year thereafter, the voters of the state shall elect the number of electors of the president and vice-president of the United States to which the state is entitled.

653:3 United States Senators. At the state general election in 1980 and at the state general election every sixth year thereafter and at the state general election in 1984 and at the state general election every sixth year thereafter, the voters of the state shall elect one United States senator.

653:4 United States Representatives. At every state general election, the voters of each congressional district shall elect one United States representative.

Election of Delegates to Party Conventions

653:5 Delegates to National Party Conventions. At every presidential primary election, the voters of the state shall vote their preference for party candidates for president and thereby choose the delegates to each presidential nominating convention to which the state is entitled.

653:6 Delegates to State Party Conventions. At every state primary election, the voters in each state representative district shall elect delegates to each state party convention in accordance with the districts laid out in RSA 662:6.

Election Dates

653:7 State General Election. The state general election shall be held on the first Tuesday following the first Monday in November of every even-numbered year.

653:8 State Primary Election. The state primary election shall be held on the second Tuesday in September of every even-numbered year.

653:9 Presidential Primary Election. The presidential primary election shall be held on the second Tuesday in March or on the Tuesday immediately preceding the date on which any other state shall hold a similar election, whichever is earlier, of each year when a president of the United States is to be elected. Said primary shall be held in connection with the regular March town meeting or election or, if held on any other day, at a special election called by the secretary of state for that purpose.

653:10 Assumption of Office. Federal officers-elect shall assume office on the date set by the U.S. Constitution. State officers-elect shall assume office on the date set by the New Hampshire Constitution. County officers-elect shall assume office on January 1 of the year following the state general election at which they were elected.

CHAPTER 654

VOTERS AND CHECKLISTS

Eligibility

654:1 Legal Voter. Every inhabitant of the state having a fixed and permanent established domicile, being a citizen of the United States, of the age provided for in Article 11 of Part First of the Constitution of New Hampshire, shall have a right at any meeting or election, to vote in the town, ward, or unincorporated place in which he is domiciled. The determinant of one's domicile is a question of factual physical presence incorporating an intention to reside for an indefinite period. This domicile is the voter's residence to which, upon temporary absence, he has the intention of returning. This domicile is that place in which he dwells on a continuing basis for a significant portion of each year.

654:2 Temporary Absence. A domicile for voting purposes acquired by any person in any town shall not be interrupted or lost by a temporary absence therefrom with the intention of returning thereto as his home. Domicile for the purpose of voting as defined in RSA 654:1, once existing, continues to exist until another such domicile is gained. Domicile for purposes of voting is a question of fact and intention. A voter can have only one domicile for these purposes. No person shall be deemed to have lost a domicile by reason of his presence or absence while employed in the service of the United States; nor while engaged in the navigation of the waters of the United States or of the high seas; nor while a teacher in or student of any seminary of learning; nor while confined in any public prison or other penal institution; nor while a patient or confined for any reason in any nursing, convalescent home or hospital, old folks or old age home, or like institution or private facility.

654:3 Voting Rights of Overseas Citizens. Notwithstanding any other provision of law to the contrary, any United States citizen being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire, who is domiciled outside the United States shall have the right to register absentee to vote in any federal election in the town or city in New Hampshire in which he had his domicile immediately prior to his departure from the United States, even though he no longer maintains domicile in said town or city and even though his intent to return thereto is uncertain, provided:

- I. He complies with all other applicable requirements and qualifications of the state of New Hampshire; and
- II. He is not domiciled and is not registered to vote in any other state or election district of a state or in any territory or possession of the United States; and
- III. He has a valid passport or card of identity issued under the authority of the secretary of state of the United States.

654:4 Armed Services Voters.

I. Notwithstanding any other provision of law to the contrary, an armed services voter, as hereinafter defined, being a citizen of the United States and being at least 18 years of age as provided in Article 11 of Part First of the Constitution of New Hampshire shall have the right to vote absentee in any state election in the town or city in New Hampshire in which he had his domicile immediately prior to such service, even though he no longer maintains domicile in said town or city and even though his intent to return thereto is uncertain, provided:

- (a) He complies with all other applicable requirements and qualifications of the state of New Hampshire.
- (b) He is not registered to vote in any other state or election district of a state or in any territory or possession of the United States.
- II. As used in this section, the term "armed services voter" means:
 - (a) Members of the United States Army, Navy, Air Force, Marine Corps, Coast Guard, or any other branch of the United States Armed Forces.

653.9 C

EXHIBIT

PLACID-Bayonne, N. J.



U.S. Department of Justice

Civil Rights Division

EXHIBIT

653:9 D

PENCAID 800-631-6599

JDR:RPL:SMC:jdh
DJ 166-012-3
2004-2563
2004-2581
2004-2582

*Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, DC 20530*

June 22, 2004

Orville B. Fitch II, Esq.
Assistant Attorney General
Civil Bureau
Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397

Dear Mr. Fitch:

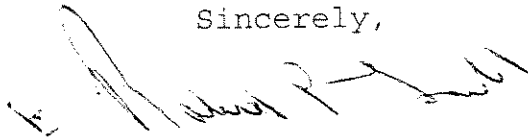
This refers to Session Law Chapter 436 (HB 575) (1979), which recodifies the election laws of the State of New Hampshire; Session Law Chapter 266 (HB 577) (2003), which implements the Help America Vote Act of 2002 (HAVA), 42 U.S.C. 15301-15545; and the adoption of formal administrative procedures for the resolution of election law complaints, including complaints filed under Title III of HAVA, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on June 7, 2004.

The Attorney General does not interpose any objection to the specified changes. Regarding Session Law Chapter 266, we note that the act specifically amends the following provisions of the State's election laws: RSA 655:19, II (Chapter 387 (1991)) (to provide for the deposit of certain candidate filing fees collected by the secretary of state into the election fund); RSA 655:19-c (Chapter 387 (1991)) (to provide for the deposit of any administrative assessments paid to the secretary of state into the election fund); RSA 664:3, I (Chapter 351 (1997)) (to provide for the deposit of political committee registration fees paid to the secretary of state into the election fund); RSA 664:21, II (Chapter 351 (1997)) (to provide for the deposit of any administrative fines for violations of the State's campaign finance laws into the election fund); and RSA 665:7 (Chapter 436 (1979)) (to authorize the Ballot Law Commission to hear and resolve complaints alleging violations of Title III of HAVA, as specified).

We note also that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Session Law Chapter 266 includes provisions that are enabling in nature. Therefore, the State is not relieved of its responsibility to seek Section 5 preclearance of any changes affecting voting proposed to be implemented pursuant to this legislation (e.g., creation of a centralized statewide voter registration database by the secretary of state and guidelines issued by the secretary of state implementing the database). See 28 C.F.R. 51.15.

Sincerely,

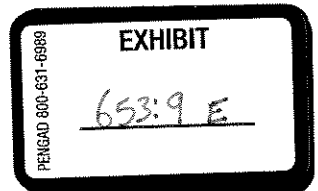
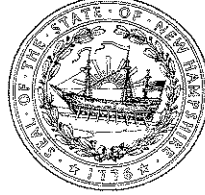
A handwritten signature in dark ink, appearing to read "Joseph D. Rich", is written over a horizontal line.

Joseph D. Rich
Chief, Voting Section

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

KELLY A. AYOTTE
ATTORNEY GENERAL



MICHAEL A. DELANEY
DEPUTY ATTORNEY GENERAL

News Release

RELEASED BY: Attorney General Kelly A. Ayotte

SUBJECT: Voting Rights Act – Submission of a request for preclearance of changes to New Hampshire Voting laws and procedures

DATE: June 10, 2005

RELEASE TIME: Immediate

Attorney General Kelly A. Ayotte announces the submission of requests for preclearance of changes made to the election laws in New Hampshire to the Federal Department of Justice. Preclearance submissions will address changes made to New Hampshire's election laws since jurisdictions in the State became subject to preclearance.

Ten New Hampshire towns are subject to section 5 of the federal Voting Rights Act. Changes to New Hampshire election laws that affect any of these ten towns must be submitted for review by either the Federal Department of Justice or the Federal District Court for Washington D.C. The federal Department of Justice will review the changes to New Hampshire's election laws to ensure that the changes do not have the effect of denying or abridging the right to vote on account of race or color, or membership in a language minority group. Changes to New Hampshire redistricting statutes have been submitted to, and approved by, the U.S. Justice Department since the 1980 census. Federal regulations require that the public be notified that the State has filed a request for preclearance and that the submission be available for public inspection.

Copies of each submission by the Attorney General for the State of New Hampshire are available at the office of the Attorney General at 33 Capitol Street, Concord New Hampshire, 03301. Each document will also be made available at the Attorney General's Office web site at:

<http://www.doj.nh.gov/elections/>

Attorney General Ayotte and the federal Department of Justice invite persons interested in this submission to submit comments and information, in writing or by telephone, to the Voting Section of the Federal Department of Justice, Civil Rights Division, at the earliest possible date to ensure that they may be considered during the preclearance review time period. Telephone 1-800-253-3931 or (202) 307-2385 or write Chief, Voting Section, Civil Rights Division, Room 7354 – NWB, Department of Justice, 950 Pennsylvania Ave., NW, Washington, DC 20530. The envelope and first page should be marked "Comment under section 5." Additional information on the Voting Rights Act and the preclearance process can be obtained at the web site of the Federal Department of Justice at:

<http://www.usdoj.gov/crt/voting/index.htm>

The New Hampshire Attorney General's Office Voting section can be contacted at:

<http://www.doj.nh.gov/elections/>
New Hampshire Toll Free 1-866-8868-3703
or 1-866-VOTER03
electionlaw@doj.nh.gov